

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Matthew G. Mescher,
Petitioner-Appellant,

v.

Dubuque County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-31-0703
Parcel No. 0727200007

On October 1, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Matthew G. Mescher submitted evidence in support of his appeal and was self-represented. The Board of Review designated Assistant County Attorney Lyle R. Gallart as its legal representative and submitted evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Matthew G. Mescher, owner of property located at 29217 Lansing Road, Dyersville, Iowa, appeals from the Dubuque County Board of Review decision reassessing his property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$162,940; representing \$52,800 in land value and \$110,140 in the improvement value. Mescher protested to the Board of Review on the ground that the property was misclassified under Iowa Code section 441.37(1)(c). In response to the protest the Board of Review notified Mescher the January 1, 2009, assessment would not change, stating "insufficient evidence to prove property was misclassified. Owner must provide documentation to show intended profit from farming activities, IRS Schedule "F" and/or Form 5213."

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Mescher than appealed to this Board on the same ground. He seeks relief by requesting the property be reclassified to agricultural realty as it was in the past.

According to the property record card, the subject property is 6.59 acres and improved by a 1794 total square-foot of living area, two-story frame dwelling built in 1926, with a one-story addition. There are two detached garages. The record card identifies several other buildings; and Mescher described the other buildings on the property depicted on Exhibit A. There is has a barn with an addition (labeled C & D), a large machine shed (labeled G), a smaller machine shed (labeled F), and an open-sided building (labeled E).

Mescher testified at hearing that when he purchased the property in 2006 the property was classified as agricultural realty and nothing has changed since that time, except he boards a few fewer horses than the previous owner. Mescher told the Board of Review he boards the horses with an intent to profit (Exhibit E). Mescher testified he has continued the use of the property since he purchased it and does so because he realizes a positive cash flow from it. He uses the money he makes boarding the horses to help pay his mortgage.

Mescher stated that approximately 5.59 of the 6.59 acres are used for agricultural purposes. He likewise said this portion of the property is committed to agricultural use an answer to the Board of Review's interrogatories (Exhibit E). Mescher testified the barn is used for boarding horses and hay storage. A large machine shed is used as an indoor riding area, a small machine shed is used to house equipment for the farm, and an open-sided building is used for storing manure, bedding, and shelter for pastured horses.

Mescher also testified that he leases an adjoining 10 acre property, growing hay on it and using it for additional pasture. This property is ten acres. He rents this property for \$1200 per year. Mescher, therefore, has about 15.59 acres of land he uses for farming.

Mescher boards the horses at \$175 per horse per month. He currently boards four horses. His expenses for feed are approximately \$30 per month. Mescher repeatedly testified that he has a positive cash flow from the operation. He stated that tax returns are for taxes and not a financial statement. We find several things clear: First, Mescher's boarding program is profitable (he referred to this as a positive cashflow); second, Mescher does use income tax deductions to his advantage to deduct expenses and claim depreciation; third, although Mescher claims deductions and expenses on his income taxes, he is managing and boarding the horses in good faith for intended profit and not to receive a decrease in his property tax liability. Mescher is not boarding the horses in an attempt to gain an agricultural classification.

Dave Kubik, Dubuque County Assessor, testified on behalf of the Board of Review that the subject assessment changed in 2007 from agricultural realty to residential realty. Kubik testified he met with the Board of Review approximately four or five years ago to determine "guidelines" that his office and the Board of Review would use when considering agricultural classifications. He referred to this meeting as a time to "come to common grips" with what a farm is and what the standard should be. He claims they looked at what other assessors were doing and what the ag land credit was based on. The "guidelines" they decided on were that a property must have ten crop acres or more or its cash equivalent of \$2000 per year in net income, essentially \$200 an acre cash rent on ten crop acres, to receive agricultural classification. He stated his office does not ask for income information from taxpayers until a petition comes before the board of review protesting the classification.

Kubik testified the agricultural "guidelines" were not given to Mescher, that they are not on the county's website, and if a taxpayer wants the "guidelines" or information regarding them, they would have to call and the "guidelines" would be explained to them. As previously noted, the Board of Review denied Mescher's appeal because he failed to supply a Schedule "F" and/or form 5213.

However, the record is not even clear that this information was requested from Mescher because he did

not have an oral hearing. And, according to Mescher's testimony, he became aware of the County's requirements after the Board of Review denied his appeal. Furthermore, we note the Board of Review's minutes indicate they rejected Mescher's claim because nothing showed "intended profit from agricultural activities," not because of the "guidelines" identified by Kubik.

Kubik is of the opinion that the subject property is primarily residential and that the property is not making a profit. He admits there is agricultural activity, but believes it is minimal as far as "revenue generating."

Kubik testified, when asked by this Board, that he did not have a definition of "profit," and it was clear that he had no knowledge of how to handle tax deductions (such as depreciation) in the determination of intended profit; essentially, Kubik did not appear to know how to use depreciation deductions to determine actual profit when valuing other types of property, particularly agricultural land. Kubik did not know what the term positive cashflow meant, but did not believe the Board of Review would consider it as profit. Kubik did not have knowledge of Mescher renting adjoining land as part of the Mescher farm operation or income from the adjoining land. In actuality it appeared Kubik had little knowledge of Mescher's actual use of the property, even though Kubik did a "drive by" of the property approximately three weeks prior to the hearing. For example, on cross-examination Mescher was repeatedly asked whether he kept personal equipment or equipment for his commercial contracting business in the buildings on the property. Mescher specifically testified that all equipment he uses for his contracting business is kept at a facility in the town of Dyersville, not on the subject property or in any buildings on the property.

It is clear to this Board that Mescher would not have purchased the subject property and continued the operation if it was not profitable. Mescher also stated he would not rent the adjoining ground to plant hay or use for pasture if he was losing money. Mescher receives a positive cash flow. Mescher was sincere and honest in his testimony.

It appears the assessor changed the classification of the property, and the Board of Review approved the change, without knowledge of the operation and without any tax forms or other evidence of the use of the property. Additionally, we question whether the Board of Review has actually adopted the “guidelines” Kubik outlined as nothing in the Board of Review’s certified record or documentary evidence submitted at hearing refers to their existence. Moreover, Kubik acknowledged the “guidelines” *are not* supported by Iowa statute or administrative rules. In reality, taxpayers do not even have access to these “guidelines.” And ultimately, these “guidelines” and rules, if used, could create an erroneous assessment because they are not part of Iowa Administrative Code rule 701-71.1(1), which requires that classifications of real property be determined using the “*guidelines set forth in this rule.*”

We find it more than reasonable to believe, based on Mescher’s honest and exact testimony, that his good faith use of the property is for intent to profit from agricultural activities, which are the primary use of the property. Therefore, this Board finds that Mescher has met his burden of proof to show the property is being used in good faith primarily for agricultural purposes with intent to profit.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*

Appeal Bd., 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. Iowa Code section 441.37A(3)(a).

Mescher asserts the property is misclassified and that its actual classification should be agricultural. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rules. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* r. 701-71.1(2). “Under administrative regulations adopted by the . . . Department¹ . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the basis of its primary use. *Sevde v. Bd. of Review of the City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. Iowa Admin. r. 701-71.1(1).

“Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes” except buildings which are primarily used or intended for human habitation. *Id.* r. 701-71.1(3). “Land . . . shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest of fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.” *Id.* With respect to residential real estate, these regulations provide that this includes land and buildings primarily used or intended for human habitation, including those buildings located on agricultural land. *Id.* r. 701-71.1(4).

Conversely, residential real estate is

all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings are used primarily or intended for human habitation shall include the dwelling as well as the structures and

¹ Iowa Code section 421.17(2)(c) gives the Director of the Department of Revenue the authority to adopt rules regarding property tax assessment; no similar statutory authority is given to Iowa assessors or Boards of Review under their respective code sections: § 441.17 and § 441.35. In fact, neither enabling statute gives these entities the authority to adopt any rules and/or “guidelines.”

improvements used primarily as part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate on agricultural land shall include only buildings as defined by this subrule.

Id.

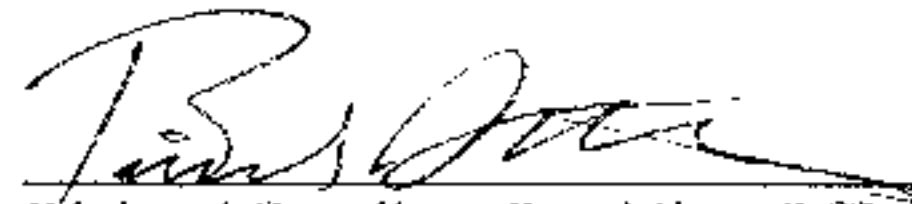
In the opinion of the Appeal Board, there is evidence to support the claim that the property is misclassified. While a residence does exist on the property, the majority of the land and improvements are being used for the feeding and management of horses. A majority of the property, other than the residence and the manicured lawn around it is used for the boarding operation. Additionally, Mescher uses adjacent property for additional pastureland and growing hay. Mescher boards the horses, feeding and managing them. We find this is being done in good faith. We note that although “good faith” is not defined by the rule, the Iowa Courts have interpreted “good faith” to mean “honesty of intention” or “subjective honest belief.” *Haberer v. Woodbury County*, 560 N.W.2d 571, 575 (Iowa 1997); *Garvis v. Scholten*, 492 N.W.2d 402, 404 (Iowa 1992). Mescher undertakes this agricultural endeavor with a good faith intent to profit.

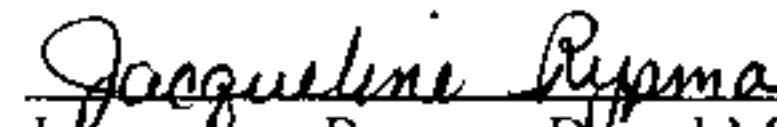
In this case, Mescher testified he realizes a positive cash flow from the operation, despite the loss shown on his Schedule F income tax return. Boarding the horses would result in a gross income of \$8400 per year (\$175 x 4 horses x 12). Mescher also has expenses of \$30 per month for feed and \$1200 a year for renting the pasture to grow hay: totaling approximately \$1620 in expenses. The rule only requires a good faith *intent* to profit. In this case, it appears from Mescher’s honest and credible testimony that he is actually realizing a profit from the operation. We, therefore, order the assessment of Matthew G. Mescher’s parcel be reclassified as agriculture and valued according to law.

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THE APPEAL BOARD ORDERS that the January 1, 2009, assessment of the Matthew G. Mescher's parcel be reclassified as agriculture and the land, ag buildings and dwelling be valued accordingly, with a copy of the corrected assessment also supplied to this Board within 14 days of the date of this order.

Dated this 29 day of November, 2010.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member

Copies to:

Matthew G. Mescher
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APPELLANT

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REPRESENTATIVE FOR APPELLEE

Denise Dolan
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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>11-29</u> , 2010.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	